IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11584 of 2006
With
SPECIAL CIVIL APPLICATION No. 11585 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE EXECUTIVE ENGINEER & 2 - Petitioner(s)
Versus
RUPSINHBHAI BANESINHBHAI CHAUHAN - Respondent(s)

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Appearance :
MR DARSHAN V SHAH for Petitioner(s) : 1 - 3.
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/06/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. Dharshan V. Shah appearing on behalf of the petitioners and learned advocate Mr. P.H. Pathak appearing on

behalf of the respondents as a caveator.

2. In these two petitions, a common award in respect to both the respondents passed by the Labour Court, Surendranagar in Reference (L.C.S.) No.144 of 2005 dated 20.2.2006 is challenged by the petitioners. The Labour Court has set aside the termination order and granted reinstatement with continuity of service without back wages of the interim period.

3. Learned advocate Mr. Shah submitted that both the workmen admitted the negligence before the concerned authority and before passing the order of dismissal, show cause notice was served to the respondents by the petitioners. Both the respondents have filed reply disputing the statement of admission made before the concerned authority. The said reply was given by the advocate on behalf of both the respondents. Learned advocate Mr. Shah further submitted that preliminary inquiry was conducted by the concerned officer and thereafter considering the reply, termination order was passed. Learned advocate Mr. Shah further submitted that both the respondents were recruited *de-hors* the recruitment rules, therefore, their appointment is *null and void* and they are not entitled for any legal right to the said post. He also

submitted that Section 25-F is also not applicable. He relied upon one decision of this Court in case of ***Karjan Municipality Vs. Shashikant Kamlakar Shukla*** reported in ***2004 G.L.H.(3) 23***. Relying on the said decision, the submission is made that temporary / daily wage employees, whose appointments are without following the due procedure, have no right to be continued and must be relieved. He also submitted that notice pay was paid and compensation also paid to the respondents. He submitted that in pursuance to the criminal complaint, the criminal case is pending before the competent Court. Except this, Mr. Shah has not made any other submission and relied upon any decision.

4. Learned advocate Mr. P.H. Pathak appearing on behalf of the respondents submitted that statement of admission immediately disputed by the workmen in reply to the show cause notice. Undisputedly, the departmental inquiry was not conducted by the petitioners and without giving any opportunity, the order of dismissal has been passed which violates the basic principles of natural justice. He submitted that if the petitioner is relied upon the admission of the respondents workmen, but, when same admission was disputed by the respondents in reply to the show cause notice then it is a burden on the

petitioners to prove the charge by holding departmental inquiry against the respondents. That basic procedure has not been followed by the petitioners, therefore, Labour Court, has rightly set aside the termination order. Learned advocate Mr. Pathak also submitted that from the date of incident, the order of termination was passed after a period of two years. He also submitted that merely, an employee was appointed *de-hors*, the rules that does not amount to ignore the provisions of the Industrial Disputes Act, 1947. However, he has made clear that no such submissions were made by the petitioner before the Labour Court. He further submitted that in reply, no such contention was raised by the petitioners before the Labour Court and it was not the issue which required to be examined by the Labour Court, therefore, first time, such contention should not have to be entertained by this Court. Learned advocate Mr. Pathak also submitted that Labour Court has not granted any amount of back wages but only reinstatement has been granted. The documents were demanded by the workmen, but such documents were not produced by the petitioner before the Labour Court. Therefore, he submitted that Labour Court has not committed any error while passing such award which requires interference by this Court while exercising the powers under Article 227 of the

Constitution of India.

5. I have considered the submissions made by both the learned advocates appearing for the respective parties. Undisputed facts are that one workman Arvindgiri Goswami was working with effect from June 1980 to September 1994 and Rupsinh Banesinh was working with effect from March 1987 to September 1994. The incident of theft was occurred on 13th January 1992. One statement was obtained from both the respondents by Deputy Executive Engineer. In the said statement, only negligence was admitted to the effect that during the working hours, both the workmen were sleeping in the premises. But that statement was disputed by both the respondents while giving reply to the show cause notice. The order of termination is dated 19th September 1994. The show cause notice was served to the respondents and reply was given by both the respondents. In reply, respondents denied the allegations as well as the disputed statement dated 14th January 1992. However, in termination order at Page 49 and Page 51, no reference made to the reply given by the petitioners. In the termination order, only facts are mentioned that at Bagodara Store, theft of C.I. Pipe occurred on 13th January 1992. For that, departmental inquiry was conducted and ultimately, respondent was

found responsible for such incident, therefore, decision to terminate the service has been taken. It is necessary to note here that when the reply was given by the workmen then why his reply was not accepted or why his explanation was not accepted. For that, no reason is given by the petitioners in the termination order. That itself violates the basic principles of natural justice. In the termination order, no reference made to the reply given by the respondents. It is a duty of the authority when show cause notice was issued being a reasonable opportunity to the respondent and when both the respondents were given reply at that time, why their reply were not accepted for that specific reason is necessary. This is also a requirement of basic principles of natural justice which has been violated.

6. On departmental inquiry which has been suggested in termination order is not a departmental inquiry as prescribed under the service rules or standing order, but, it was a preliminary inquiry conducted by the authority in absence of respondent workmen. Therefore, without giving any opportunity to the workmen, the order of termination has been passed. That aspect has been rightly appreciated by the Labour Court while passing the award.

7. Though it is not necessary to deal with the contention about illegal appointment of the respondent workmen made by the petitioners. Because, no such contention was used before the Labour Court, however, when it has been raised before this Court then this Court has considered it in light of recent decision of Apex Court reported in ***2006 AIR SCW 2497 = 2006(V) Scale 154 = 2006 (3) Supreme Court today 772*** in case of ***Nagar Mahapalika Vs. State of U.P. And Others***. In decision, Apex Court has considered the recent decision of larger bench of Apex Court in case of ***State of Karnataka Vs. Umadevi*** reported in ***2006(4) Scale 197.*** In the decision of Nagar Mahapalika, the Apex Court has observed that "***But the appointments of the Respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief.***" Therefore, in light of the above observation made by the Apex Court,

even, in case, when the appointment is not made accordance with Act and Rules, but Court can consider the provisions of Industrial Disputes Act while determining the legality and validity of termination order. The statutory service rules cannot prevail over the provisions of Industrial Disputes Act, 1947. Therefore, the contentions which has been raised by the learned advocate for the petitioners are not accepted by this Court.

8. The Labor Court has examined the matter while deciding the Issue No.1 and Issue No.2 and considered the submissions made by both the parties and also considered the documentary evidence which were produced by both the parties. The Labour Court has come to the conclusion that order of termination has been passed after receiving the reply from the respondent vide Exh.35 and Exh.36 without holding departmental inquiry against the respondent workmen. Inspite of the demand made by the workmen before the Labour Court, no documents in respect to preliminary inquiry was produced by the petitioners before the Labour Court. Therefore, ultimately, Labour Court has come to the conclusion that order of termination has been passed violating the basic principles of natural justice and without holding departmental inquiry against the respondent workmen. The termination

is based on misconduct alleged against the workmen.

9. The Labour Court has also considered some part of gainful employment and ultimately, considering the fact that both the workmen are gainfully employed not granted any amount of back wages of interim period. It amounts to deny the back wages of almost more than ten years.

10. In view of above observation, after perusing the common award in question and after considering the submissions made by both the learned advocates appearing for the respective parties, I have perused the award and also considered the reasoning given by the Labour Court. The Labour Court has rightly comprehensively dealt with the dispute in accordance with law and according to my opinion, Labour Court has not committed any error which requires any interference by this Court while exercising the power under Article 227 of the Constitution of India. This Court having very limited jurisdiction under Article 227 of the Constitution of India. This aspect has been examined by the Apex Court in case of ***Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi*** reported in ***(1995)6 SCC 576***. The following observation has referred as under :

> ***"The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."***

Considering the above observation made by the Apex Court, according to my opinion, this is not the case in which grave injustice caused to the petitioners or there is no flagrant abuse of fundamental principles of law or justice and therefore, considering the limited jurisdiction of this Court, this Court cannot act as an appellate authority under Article 227 of the Constitution of India. Therefore, according to my opinion, there is no infirmity in the award and no such infirmity has been pointed by the learned advocate Mr. Shah appearing on behalf of the petitioners. There is no jurisdictional error committed by the Labour Court. Therefore, according to my opinion, there is no substance in the present petitions and therefore, the same deserves to be dismissed.

11. Accordingly, both the petitions are

dismissed. No order as to costs.

[H.K. RATHOD, J.]

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